

Reclaiming the Rights of the Sovereign, Territorial Nation of Scotland

Published by the Steering Group for the Scottish National Congress,
For and on behalf of the Scottish Liberation Movement



*The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by **internal** law¹*

¹ UN Int. Law Commission 2001 vol II Part 2 Responsibility of States for Internationally Wrongful Acts Part one
The Internationally Wrongful Act of a State, Chapter 1, General principles, Article 3

The Steering Group of the Scottish Liberation Movement:

Alf Baird, formerly Professor of Maritime Business and Director of the Maritime Transport Research Group at Edinburgh Napier University has a PhD in Strategic Management in Global Shipping. His earlier career included working in the shipping industry running international liner shipping services from Scotland. His research includes development of applied theoretical frameworks which explain complex issues and are used as an aid to industry and policy analysis, in strategic management and teaching. He has developed the only applied theoretical framework which helps explain the phenomenon of Scottish independence. This was published in his book 'Doun-Hauden: The Socio-Political Determinants of Scottish Independence'.

Phil Boswell is a former MP who represented Coatbridge, Chryston and Bellshill. In Westminster, he served on the Public Accounts Committee. His work in the oil and gas industry has taken him to Hong Kong, Malaysia, Egypt USA Qatar and the Falklands. He now works as a specialist Oil & Gas Construction Contracts Manager, QS and Disputes Resolution expert. A member of the SNP, Phil is an outspoken supporter of pursuing different strategies for gaining Scottish self-determination.

John Brown, co-author of the popular wee pocket booklet Scotland & Independence, is a former civil servant. He spent his long career working in Scotland for DHSS /DWP, then latterly for the Cabinet Office, London. As an administrator, inspector and office manager he worked in and visited most of Scotland's poorest and most deprived areas. He has been an active supporter of independence since 2014 and is now not aligned to any political party. He is motivated by a desire to improve the lives of ordinary people through the achievement of independence. He is also a member of the Scottish Sovereignty Research Group.

Iain Lawson Creator of successful businesses in Scotland, Estonia and Cyprus. Former Executive Vice Convener of the SNP responsible for the Party's Administration and Fundraising. NEC Member 12 years and various Party Spokesman roles including Trade and Industry, Steel and Transport briefs. Honorary Consul for the Republic of Estonia in Scotland from 2003 until 2018. Honorary President University of Paisley, now University of the West of Scotland. One of the nine men who walked from Gartcosh to London in 1986 in defence of the Scottish Steel Industry. Now retired. Current chair of the Scottish National Congress Steering Group.

Leah Gunn Barrett

Leah is a dual US-UK citizen. She worked for several years in the US for Data Resources (DRI), and in London for The Economist Group and Tetra Pak UK. In the US, she led gun control organisations in the states of Maryland and New York after her older brother, Greg, was murdered in 1997. She holds a degree in economics from Carleton College, a Master's in International Affairs and Russian from Columbia University and a Master's in Teaching from Johns Hopkins University. Leah lives in Edinburgh.

Sara Salyers

Professionally retired, television producer, writer, investigative journalist (award winning), college teacher and educational researcher. Founder member of Salvo. Currently a writer, speaker and activist.

Alex Thorburn

Branch Chairman and Constituency Organiser for SNP in the 1970s. Civil Service in London: Correspondence Sec. for Cabinet Minister; and then Parliamentary Branch of DHSS. Trawlerman for 20+ years, career ended by a stroke in 1993. Helped establish several Disabled People's Organisations (DPOs). Qualified Disability Equality Trainer, Disability in Education Trainer, Independent Living Advocate (University of Essex – 2004). Certified Access Auditor. Trained as an independent advocate and mental health advocate. One of 3 members from Scotland of the 23-member advisory group on disability-related matters to UK government. Member of Scotland's National Action Plan (SNAP) for Human Rights since 2014 and now the Leadership Panel of the second 4-year SNAP cycle. Member of the Scottish Human Rights Commission's Lived Experience Leadership Group and the Scottish Government's Human Rights Lived Experience Board.

Marjorie Thompson worked on Capitol Hill as a congressional staffer, as an educational administrator at Holy Loch, at Westminster as a lobbyist for CND and the Royal College of Nursing, and as a researcher for Ann Clwyd MP. She was vice chair, later chair of British CND, Director of Communications for the Commission for Racial Equality and Director of Saatchi & Saatchi Cause Connection. As a freelance consultant she has advised over 50 charities and mentored award winning grassroots campaigners. She has co-written two books: Brand Spirit (on cause related marketing with Hamish Pringle, Amazon business book of the year translated into 7 languages) & The New Brand Spirit (on communicating sustainability in marketing), with Christian Conrad.

Peter Young Part of the Scottish European diaspora, Peter Young has lived and worked in Scandinavia for several decades. He moved to Denmark after completing a BA, and taught for 10 years in Copenhagen. Since 1994, Peter has edited and published The School Times International, a monthly educational, news-based magazine he established as a teaching innovation. It is used in schools and in adult teaching across the Nordic region. In expectation of a pre-Brexit referendum in Scotland, he set up the @indyscotnews Twitter feed in 2016. The moderated Twitter feed, auto-generates links to the latest content, from about 50 serious pro-indy sites, into one news stream.

PART ONE; A SOVEREIGN TERRITORIAL NATION

Published by Salvo, November 2022



Know your past, shape your future

In 1707, the sovereign nation state of Scotland entered into a “voluntary political union” with the sovereign nation state of England. The new, united, political state styled itself ‘The United Kingdom of Great Britain’. But this title reflected not a constitutional or legal reality but rather the aspirations of the monarch who procured it. Thus in the preamble to the Treaty of Union is to be found not a definition of its real effect, as we are led to believe, but only an aspirational description of intent²:

That the two Kingdoms of (fn. 1) Scotland and England, shall, upon the first Day of May next ensuing the Date hereof, and for ever after, be united into one Kingdom by the Name of Great-Britain, and that the Ensigns Armorial of the said united Kingdom, be such as her Majesty shall appoint; and the Crosses of St. Andrew and St. George be conjoined in such a manner as her Majesty shall think fit, and used in all Flags, Banners, Standards, and Ensigns, both at Sea and Land.

It was aspirational because the creation of a new ‘kingdom’ along with a new state and a new parliament, was constitutionally impossible.

A kingdom is a territory, as well as a people, ruled by a monarch. It may also be described as an area of land held by, and depending on the existence of, a crown. And a crown is not merely a monarch. It is an institution distinct from the individual who wears it. The crown encompasses the territorial, judicial, political and economic authority of a kingdom. The monarch is an individual who may die, abdicate or be replaced. The crown as an institution, (which varies in character from nation to nation), continues while monarchs change. It may even exist without the monarch, with ‘an empty throne’.

² The purpose of the change was, in fact, to formally advise the other countries of the world that the Islands of Britain had agreed upon a political arrangement.

The Crown of Scotland has an ancient character entirely different from that of England and its conquered territories of Wales and N. Ireland. Anne Queen of England and Queen of Scots was *not* Anne, Queen of Scotland. The difference between these titles is the rock on which the ambition to create a new, united kingdom legally foundered³:

Conventional feudal theory and practice was based (in England and elsewhere) on the premise that a kingdom was first and foremost a feudal entity and, in that sense, the property of its king or queen. In Scotland's feudal system, this situation was radically tempered by the Crown's status as representative of the Community of the Realm which vested that 'ownership' in the sovereignty of the people.⁴

Although this distinction has been treated by the British establishment as an irritating irrelevance, it is key to the true, constitutional character of the political and economic merger which self-identifies as a 'united kingdom'. The institution of the crown in Scotland represents the people of the nation rather than an individual. A monarch in Scotland ruled, not by 'divine right', force of arms, or feudal entitlement but by consent of the people, the source of power and highest authority of the nation. Such authority is what we term 'sovereignty'. It is from the constitutional character of the Scottish crown that the constitutional sovereignty of the Scottish people derives. They are the sovereign power, represented by the institution of the crown.

This is why Scotland had no king or queen of the 'land', only of Scots. And why Queen Anne had no power, as the Scottish Parliament had no power, to merge the territories of England and Scotland into a single, territorial nation. Neither Queen nor parliament could transfer to the foundations of the new kingdom a sovereignty which neither possessed. Nonetheless, the British state has represented the territorial ambitions of the larger partner in the voluntary, political union as legal fact, so defined by its own courts and governments.

So continuously and assiduously has it done so, that it has created an almost universally accepted reality, unassailable by Scottish Courts, popular movements or jurists.

To support this legal fraud, the constitution which had before applied only to England was extended to all of the UK. Scotland's ancient constitution was replaced by that of a nation with whom it was almost continuously at war before 1707. UK law departments teach only this constitution so that Scotland

³ *In fact, it is the incompatibility of the Crowns that gives rise to the constitutional incompatibility of England and Scotland.*

⁴ R Callander 'How Scotland is Owned' pp. 45 - 46 (Canongate, 1998)

today can produce no constitutional lawyers versed in the distinct and often incompatible provisions of its own constitution (the foundation of which is the character of the institution of the Crown as representative of the Community of the Realm). To transform its ambitions into accepted fact and render the universal acceptance of that fraud unassailable, the English doctrine of parliamentary sovereignty has replaced the sovereignty of the Scottish people - in breach of the Treaty conditions. In order to legitimise the breach, the English Act of Union (ratification), replaces the Treaty. The highest courts in the UK uphold the English constitution in every respect, legitimising the overthrow of the Scottish constitution by that of its 'auld enemy'.

None of this, however, actually legitimises the translation of a political and economic union into a single, territorial and constitutionally homogeneous 'kingdom'. Despite the many assertions of the British establishment to the contrary; despite the imposition of English territorial and judicial sovereignty by fiat; and, above all, despite the co-opting and disposal of Scotland's territorial assets as though these were the assets of a single, United Kingdom, Scotland as a nation was not absorbed seamlessly into the larger kingdom which Great Britain aspired to become:

Scotland's rights of sovereignty over its territory are vested in the Crown with its distinct constitutional and legal identity in Scotland under Scots law, compared to the Crown in the rest of the United Kingdom under English law.

This distinct identity was not affected by the Union of Crowns in 1603 and has continued since the Treaty of Union in 1707, when Scotland ceased to be an independent state but continued to be a sovereign territorial nation⁵.

Scotland has remained sovereign, defined by the reach of Scots law and the distinct, legal character of the Scottish Crown.

Under the articles of Union, Scotland surrendered its independent statehood but continued to be a sovereign nation. The status of Scotland as a stateless nation is fairly unusual internationally and has attracted particular sociological and political study...

Constitutionally, the ultimate ownership of the territory of Scotland as a sovereign nation is vested in the Crown. The territory is synonymous with the Realm of Scotland, while the Crown itself represents the Community of the Realm. This ultimate ownership encompasses the whole territory and all its natural assets.⁶ (Emphasis added.)

⁵ *The Land of Scotland and the Common Good, Report of the Land Reform Review Group, May 2014, Section 1 - Land of Scotland, (Land Reform Review Group Secretariat)*

⁶ *R Callander 'How Scotland is Owned' p. 43 (Canongate, 1998)*

The political and economic union between the countries was not a territorial union. To this day, the territorial ownership of Scotland was, (and remains), vested, not in the person of the monarch or the state, (which acts on the monarch's behalf), but in the Crown of Scotland, the Community of the Realm, the people.

Crown property rights in Scots law, which are an important part of Scotland's system of land ownership, are also distinct from Crown property rights in the rest of the UK and belong to Scotland as a sovereign territorial nation.⁷

At no point was the authority to manage Scotland's territorial assets lawfully sought. At no point did that authority lawfully pass, through a purely political and economic merger, to the UK government. It has simply assumed this authority, and done so by applying the English principle of the monarch's ownership of the land, not as personal property, but 'in right of the Crown':

"Crown interest" means an interest belonging to Her Majesty in right of the Crown or belonging to a government department or held in trust for Her Majesty for the purposes of a government department.⁸

It is well understood by the UK government that 'right of the Crown' means something different in Scotland from the rest of the UK. No government department can lawfully own, or hold in trust for the monarch that which is not vested in the monarch in Right of the *Scottish* Crown. And yet the term right of the Crown is applied in precisely the same way across the UK. Within the laws and policies that govern Scotland's territorial assets, a single 'Crown', English in character, is imposed across the entire United Kingdom:

An Act to vest in the Crown the property in petroleum and natural gas within Great Britain and to make provision with respect to the searching and boring for and getting of petroleum and natural gas, and for purposes connected with the matters aforesaid. [12th July 1934.]

BE IT ENACTED by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1 Vesting of property in petroleum in His Majesty

(1) The property in petroleum existing in its natural condition in strata in Great Britain is hereby vested in His Majesty, and His Majesty shall have the exclusive right of searching and boring for and getting such petroleum.⁹

⁷ *The Land of Scotland and the Common Good, Report of the Land Reform Review Group*

⁸ "Promoting Development in Scotland" CEC 1998

⁹ *Petroleum (Production) Act 1934 CHAPTER 36*

It is as if, by using this, single description, the British government established a single set of rights across the UK via the 'interest of the Crown'. In fact, this is semantic window dressing. By assuming the administration of the assets of a sovereign territory, the British government established itself, not as the lawful owner/manager for the monarch but as trustee for the lawful owners, the people of Scotland:

However, the rights to a number of specific minerals are held in the national interest. They are the right to gold and silver, the right to petroleum (oil and gas) and the right to coal. The public ownership of the rights to these natural resources is a very important part of public land ownership in Scotland....(but) while all Crown property rights in Scotland belong to Scotland as a sovereign territory, the Crown's ownership of 'petroleum' in Scotland is administered by the UK Government.¹⁰

It is arguable that the Petroleum Act 1934 was unlawful in Scotland since it vested the property rights to Scotland's oil and gas in the *person* of the monarch rather than the Crown, making no distinction between the territorial rights of the monarch in the nations of England and Scotland. That these rights remain vested in the Crown, however, continues to be recognised, despite the deliberate conflation of a Crown vested in a monarch and a Crown vested in a people. It is now a matter of disentangling the Right of the Crown as it applies in Scotland from that which applies in the rest of the UK.

It also appears that there was some UK government recognition, subsequent to the 1934 Act, that in order to maintain control of the assets of Scotland, the UK government would have to establish itself as a kind of trustee for the owners, the people of Scotland. (It is worth bearing in mind that any trust is legally required to operate in the interests of the 'beneficiaries', in this case the Scottish population.)

OIL AND GAS

9 The Board of Trade was made responsible for managing the Crown's right, with 'petroleum' defined in the Act to include "any mineral oil or relative hydrocarbon and natural gas existing in its natural condition in strata, but does not include coal or bituminous shales".

10 The Petroleum (Production) Act 1934 repealed the 1918 Act, while reaffirming that legal title to petroleum existing in its natural state in Great Britain was vested in the Crown. The Act provided for the Government to continue to license other persons to search for and get oil.

10 The Land of Scotland and the Common Good, Report of the Land Reform Review Group

11 When the United Nations Conference on the Law of the Sea's Continental Shelf Convention 1958, was enacted into UK law by the Continental Shelf Act 1964, the rights over the UK continental shelf to the 200 nautical mile limit were vested in the Crown. The Act also applied the licensing provisions of the 1934 Petroleum Act to the UK continental shelf.

12 The Petroleum Act 1998 consolidated a number of the earlier enactments and contains the legislation that currently determines matters such as the vesting of ownership of oil and gas within Great Britain and its territorial sea in the Crown, the granting of oil licences and rules relating to submarine pipelines and the decommissioning of offshore installations.

13 Today, the UK Government issues licences for oil and gas through the Department of Energy and Climate Change (DECC). An annual rental is charged under each licence, but there is no longer a royalty regime on production. This was abolished on 1st January 2003. The UK Government raises the majority of its revenue from oil and gas through taxation¹¹.

14 Thus, while all Crown property rights in Scotland belong to Scotland as a sovereign territory, the Crown's ownership of 'petroleum' in Scotland is administered by the UK Government.¹²

In plain language, in acting as a kind of trustee for the nation, administering our resources on our behalf, the UK Government acknowledges what we own as a nation by sovereign, territorial right. This little known concession to international law is one of the very few acknowledgments which the government has ever been forced to make of the truth of Scotland's position within the UK.

What has prevented Scotland from asserting its sovereign territorial rights and demanding control, through a purely Scottish public body, the management of its own resources? Through what body might it have done so? To what international authority might a non-governmental organisation have appealed for justice? What UK court would admit the fraud which has allowed that state to avail itself of the immense wealth in Scotland's sea beds? Moreover, knowledge is power and Scots, who have been kept intentionally ignorant of the legal framework on which the United Kingdom is founded, have been rendered powerless through that ignorance.

¹¹ Since the publication of this paper in 2014, the DECC has been replaced first by the Oil and Gas Authority and then by the North Sea Transition Authority (business name of the OGA).

¹² *The Land of Scotland and the Common Good, Report of the Land Reform Review Group, May 2014, Section 1 - Land of Scotland, (Land Reform Review Group Secretariat)*

They have also been 'captured' by the centuries old propaganda which has convinced a nation that it is only with the Westminster government and the UK courts that any remedy exists.

Today, however, international laws and agreements which did not exist when Westminster attempted to reclassify Scotland as 'North Britain' (1950's), hold governments to the terms of their treaties and uphold the sovereign rights of nations and peoples. Thus, Scotland's judicial and territorial sovereignty, distinct from the political and economic Union, ensures that, though a stateless nation, Scotland retains the legal and territorial rights and protections due to a sovereign nation. And among those rights is the control and benefit of its own resources under the principle of permanent sovereignty of peoples and nations:

- (a) The right to permanent sovereignty is a right to freely use, control and dispose of natural resources. It is permanent and inalienable, inherent in sovereignty and a basic constituent of the right to self-determination.
- (b) The right to permanent sovereignty is a right of both States **and peoples**. While there may be some confusion in certain passages, this conclusion clearly emerges from the resolutions as a whole. It also necessarily follows from the status of permanent sovereignty as a basic constituent of the right of peoples to self-determination. In resolutions 837 (IX), 1314 (XIII), 1803 (XVII) and 2692 (XXV), the General Assembly refers to "peoples and nations".....
- (c) The right to permanent sovereignty includes the right of peoples to regain effective control over their natural resources. In resolution 3171 (XXVIII), the General Assembly: "Supports resolutely the efforts of the developing countries and of the peoples of the territories under colonial and racial domination and foreign occupation in their struggle to regain effective control over their natural resources."
- (d) The right to permanent sovereignty also includes, in case of violation, the right to restitution and full compensation. In resolution 3201 (S-VI), paragraph 4 (f), the General Assembly includes the following principle: "The right of all States, territories and peoples under foreign occupation, alien and colonial domination or apartheid to restitution and full compensation for the exploitation and depletion of, and damages to, the natural resources and all other resources of those States, territories and peoples." (See to the same effect article 16 of resolution 3281 (XXIX) and paragraph 33 of the Lima Declaration endorsed by the General Assembly in resolution 3362 (S-VII)).¹³

We have been defrauded in ignorance. Armed with the knowledge of our true constitutional position and our rights in international law, the Scottish people now have the opportunity to remedy an old and profoundly injurious wrong.

13 Implications, under international law, of the United Nations resolutions on permanent sovereignty over natural resources, on the occupied Palestinian and other Arab territories and on the obligations of Israel concerning its conduct in these territories, General Assembly of the United Nations, Thirty-eighth session Item 12 of the preliminary list, REPORT OF THE ECONOMIC AND SOCIAL COUNCIL

PART TWO: RESPONSE OF THE SCOTTISH NATIONAL CONGRESS STEERING GROUP FOR AND BEHALF OF THE SCOTTISH LIBERATION MOVEMENT

In light of the clear, constitutional rights of the sovereign territorial nation of Scotland and in response to the calculated, longstanding and ongoing dispossession of the Scottish people of their sovereign assets by the British state, the Scottish National Congress Steering Group, for and on behalf of the Scottish Liberation Movement, now asserts those rights under international law and the universally accepted principles of international justice.

- We accuse the British state, through its organs and officials, its unlawful legislation and its domestic court rulings and most of all through its seizure of the natural resources and assets and appropriation of the benefits belonging and constitutionally reserved to the people of Scotland, of criminal fraud against a sovereign territorial nation.
- We accuse the British state of consciously and assiduously misrepresenting the constitutional arrangement between the sovereign territorial nations of Scotland and England so as:
 1. to continue to follow a colonial agenda by which the resources of the Scottish nation are diverted to the detriment of that nation and to the benefit of the larger nation;
 2. to avoid the penalties and reparations due to Scotland for the wrongful expropriation of its natural resources
- We accuse the British state of knowingly and deliberately continuing to commit this criminal fraud in full knowledge of the true territorial rights of the Scottish people and the criminal character, under international law, of its actions.
- We accuse the British state of suppressing every democratic right of the Scottish people to realise self-determination and control of their own destinies, in order to continue exploiting Scotland's natural resources.
- We accuse the British State of knowingly creating a 'trust' arrangement in order to establish a basis for legitimate control of Scotland's wealth under international law, and of abusing that position to impoverish the rightful beneficiaries of that trust.

We further affirm that neither the Parliament nor any court of the UK, including the Supreme Court, is empowered to legitimise that fraud by any statute or ruling whatsoever:

*The characterization of an act of a State as internationally wrongful is governed by international law. Such characterization is not affected by the characterization of the same act as lawful by **internal** law.*¹⁴

We therefore invoke the principles of international law and the rights of the sovereign territorial nation of Scotland under that law:

RESPONSIBILITY OF STATES FOR INTERNATIONALLY WRONGFUL ACTS: PART ONE

Article 4

Conduct of organs of a State

1. The conduct of any State organ shall be considered an act of that State under international law, whether the organ exercises legislative, executive, judicial or any other functions, whatever position it holds in the organization of the State, and whatever its character as an organ of the central Government or of a territorial unit of the State.

Article 14

Extension in time of the breach of an international obligation

- 1. The breach of an international obligation by an act of a State not having a continuing character occurs at the moment when the act is performed, even if its effects continue.*
- 2. The breach of an international obligation by an act of a State having a continuing character extends over the entire period during which the act continues and remains not in conformity with the international obligation*

Article 15

Breach consisting of a composite act

- 1. The breach of an international obligation by a State through a series of actions or omissions defined in aggregate as wrongful occurs when the action or omission occurs which, taken with the other actions or omissions, is sufficient to constitute the wrongful act.*

¹⁴ *Responsibility of States for Internationally Wrongful Acts, UN 2005 Article 3, Part One, The internationally wrongful act of a state*

2. In such a case, the breach extends over the entire period starting with the first of the actions or omissions of the series and lasts for as long as these actions or omissions are repeated and remain not in conformity with the international obligation.

**PART TWO: CONTENT OF THE INTERNATIONAL RESPONSIBILITY OF A STATE,
CHAPTER I GENERAL PRINCIPLES**

Article 28

Legal consequences of an internationally wrongful act

The international responsibility of a State which is entailed by an internationally wrongful act in accordance with the provisions of part one involves legal consequences as set out in this part.

Article 29

Continued duty of performance

The legal consequences of an internationally wrongful act under this part do not affect the continued duty of the responsible State to perform the obligation breached. ...

Article 30

Cessation and non-repetition

The State responsible for the internationally wrongful act is under an obligation:

- (a) to cease that act, if it is continuing;*
- (b) to offer appropriate assurances and guarantees of non-repetition, if circumstances so require.*

Article 31

Reparation

- 1. The responsible State is under an obligation to make full reparation for the injury caused by the internationally wrongful act.*
- 2. Injury includes any damage, whether material or moral, caused by the internationally wrongful act of a State.*

Article 32

Irrelevance of internal law

*The responsible State may not rely on the provisions of its internal law as justification for failure to comply with its obligations under this part.*¹⁵

We therefore call on our fellow Scots and the international community to support the campaign of the Scottish Liberation Movement to restore the rights of the sovereign territorial nation of Scotland under international law, to remove the 'administrative' control of the British state from the assets owned by the Scottish people and to obtain for this nation the restitution owed to them by the British state for its fraudulent appropriation of Scotland's natural resources over many decades and of the benefits that should have accrued to the Scottish people as the lawful and exclusive owners of these resources.



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¹⁵ *UN Int. Law Commission 2001 vol II Part 2 Responsibility of States for Internationally Wrongful Acts Parts One and Two (excerpted)*
The Internationally Wrongful Act of a State